IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No.1944 of 1998

1. Shri Shivshankar Gundu Jawanjal
2. Shri Sanjay Bhalchandra Umbrajkar Petitioners

Vs.

1. The State of Maharashtra,
through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 400 043.

2. Settlement Commissiioner Land
Records,
Pune Region, Yerawada,
Bunglow Nos.9 & 11,
Pune

3. Deputy Director of Land Records,
Pune Region, Opp. 15 August Lodge,
Pune. Respondents

With
Writ Petition No.1908 of 1998

Smt.Megha Uday Savant/Desai Petitioner
Vs.
The State of Maharashtra & ors. Respondents

With
Writ Petition No.2058 of 1998

1. Shri Jayant R. Gangurde
2. Smt. Vandana Meshram
3. Maruti C. Pagare

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.2059 of 1998

1. Shri Bhagwant Y. Vispute
2. Smt. S.B.More

3. Shri Sunil Dasharath Mohre
4. Shri Sunil Mahadev Abunhavane — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2060 of 1998

1. Sanjay S. Bafna
2. Shri Govind H. Jadhav
3. Shri Anil G. Sankhe
4. Shri Raghunath H. Patil — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2061 of 1998

1. Shri Digambar R. Modak
2. Issmail Abdul Mukadam
3. Smt. Sandya R. Band
4. Smt. Shobha Rupvate — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2062 of 1998

1. Smt. Sunanda M. Sarwankar
2. Kum. Meera Laxman Kurle
3. Smt. Vidya Patil (Musale) — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2063 of 1998

Shri Manoj Kulkarni — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2064 of 1998

1. Shri Raju Dugaonkar
2. Kum. K.K.Chaubal — Petitioners

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.2065 of 1998

1. Pramod T. Shetye
2. Smt.Sushila Ramchandra Fulpagare Petitioners
Vs.
The State of Maharashtra & ors. Respondents

With
Writ Petition No.2066 of 1998

1. Smt.Rachana Anand Dharwadkar
2. Shri Dipak Vishnu Keluskar
3. Smt.Sheela Rajaram Mamlekar
4. Shri Sneha R. Sawant
5. Shri Vijay Radheshyam Meshram Petitioners
Vs.
The State of Maharashtra & ors. Respondents

With
Writ Petition No.2067 of 1998

1. Mrs.Dipika D. Sawant
(Shubhangi Pujare)
2. Shri Rajkumar S. Angolkar
3. Kum. Vandana Sawant
(Mrs.Deepa Rane)
4. Shri Harishchandra Chandu Mamalekar Petitioners
Vs.
The State of Maharashtra & ors. Respondents

With
Writ Petition No.2150 of 1998

1. Rajaram Babu Kokate
2. Shri Rajendra Tukaram Paramsagar
3. Shri Tukaram Hiralal Bhosale
4. Shri Arvind Anandrao Mithari
5. Shri Ajay Madhavrao Sathe
6. Shri Anaji Vasant Raorane
7. Shri Babasaheb Shankarrao Sankpal
8. Shri Murlidhar Krushnarao Rabade

9. Kum. Sunita Sadashiv Bhapkar
10. Shri Dattatray Ramchandra Varekar
11. Shri Salim Rahim Sheikh
12. Shri Girish Sadashiv Ingale
13. Shri Jahangir Gulab Jamadar
14. Shri Prashant Prabhakar Chorghe — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2151 of 1998

1. Rajendra Narayan Patwardhan
2. Shri Parshram Ramu Shinde
3. Shri Chandrakant Narsgonda Patil
4. Shri Lahu Malasu Narute
5. Smt. Malan Baburao Mote
6. Shri Gopal Raghunath Warande
7. Shri Sadanand Lakshman Kadam
8. Shri Vishwanath Narayan Kumathekar
9. Shri Rajendra Jaysingh Thorat
10. Shri Ashok Keshav Lad
11. Shri Parashuram Shankar Kamble
12. Shri Balwant Raghu Nalawade — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2152 of 1998

1. Shri Yashwant Arjun More
2. Shri Dilip Narayan Kamble
3. Smt. Kamalini Bhau Kamble
4. Kum. Asha Laxman Mandke
   alias Sau.Amruta Ravindra Parkhi
5. Kum.Chitra Namdeo Bahulikar
   alias Mrs.Chitra Ganesh Gare
6. Smt.Aruna Gopinath Ghume
7. Mrs.Kavita Prakash Dugal
8. Sau. Shanta Narsinha Joshi
9. Sou. Shahsikala Ashok Bhondwe
10. Sou. Nutan Dattatray Khedkar
11. Smt. Shahnaz Begam Mohmmad Ayub Sheikh
12. Kum. Netra Dattatray Ghumare
13. Smt. Malan Ramchandra Bhosale
14. Sou. Neeta Gajanan Dabhade

15. Shri Madan Vishwmbhar Desai
16. Kum. Vidya Vinayak Gosawi
17. Smt. Pramila Ganpat Pawar
18. Shri Yashwant Haribhau Padawe — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2153 of 1998

1. Chandrakant Haribhau Sawant
2. Shri Madhukar Shankar Gaikwad
3. Shri Anil Digambar Kharpe
4. Smt. Shaila Ramchandra Pathak — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2336 of 1998

1. Prabhavati Gangadhar Chavan
2. Suvarna Pandurang Ghadge
3. Pandurang Kashinath Devmare

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2638 of 1998

Sharad Sadanand Bandbe — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2639 of 1998

Smt. Kalpana Tukaram Chandekar — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

With

Writ Petition No.2640 of 1998

Smt.Angha Arun Potale — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2644 of 1998

Gopal Laxman Kubal — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2647 of 1998

Pandharinath Shankar Chauhan — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2649 of 1998

Prashant P. Shivalkar — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2652 of 1998

Manohar Joshi — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2653 of 1998

Smt. Dipti Pradeep Ketkar — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

With
Writ Petition No.2780 of 1998

1. Baban Shivaji Bodekar
2. Shri Tanaji Ananta Mane
3. Shri Raghavendra Shriram Foujdar
4. Shri Yashwant Ganesh Khaladkar
5. Shri Yashwant Manohar Rawal
6. Shri Vinayak Ganesh Khaladkar
7. Shri Manohar Kisan Parthe
8. Shri Ramchandra Gopalrao Jadahv Petitioners

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.2785 of 1998

1. Laxman Vasant Mhatre
2. Shri Ravindra Raghunath Salavkar
3. Shri Vikas Bhikoba Kokane
4. Shri Subhash Laxman Raut
5. Mrs.Yayashree Rajaram Shirgaonkar
6. Shri Prakash Ramkrishna Asabhe
7. Mrs. Pradnya Parvina Bovane
8. Shri Sayaji Namdeo Jawale Petitioners

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.2928 of 1998

1. Anant Ambadas Chumbalkar
2. Mrs.Kanchanmala Dattajirao Dalvi
3. Shri Prasad Hari Ashtekar
4. Shri Santosh Madhukar Dikshit
5. Shri Anisahemad Kutubuddin Kotwal Petitioners

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.3127 of 1998

1. Smt.Sulochana Lakshman Lokhande
2. Smt. Nisha Shantaram Bhosale Petitioners

Vs.

The State of Maharashtra & ors. Respondents

With
Writ Petition No.4849 of 1998

1. Mrs.Shraddha Prabhakar Panchakshri
2. Mr.Rajendra Dagadu Borase
3. Mr.Vasant Prabhakar Misal — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With
Writ Petition No.5394 of 2004

1. Jaywant R. Gangurde
2. Smt. Vandana Meshram
3. Maruti C. Pagare
4. Sanjay Shantilal Bafna
5. Govind Harishchandra Jadhav
6. Anil Gandhar Sankhe
7. Raghunath Hadkya Patil
8. Digambar R. Modak
9. Ismail Abdul Mukadam
10. Sandhya R. Band
11. Shobha Rupwate
12. Sunanda Sarwankar
13. Meera Kurle
14. Rajesh Dugaonkar
15. Ms. K.K.Chaubal
16. Pramod Shetye
17. Ms.Sushila Fulpagar
18. Dipak Keluskar
19. Sheela Mamlekar
20. Dipika D. Sawant (Shubhangi Pujare)
21. Rajkumar S. Angolkar
22. Kum. Vandana Sawant (Mrs.Deepa Rane)
23. Harishchandra Chandu Mamalekar
24. Vijay Meshram — Petitioners

Vs.

The State of Maharashtra & ors. — Respondents

With
Writ Petition No.6818 of 1998

Shri Rajiv Kamalakar Gupte — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

Mr.B.P.Apte,Sr.Counsel with Mrs.S.S.Deshpande for petitioners in all the petitions except mentioned below.

Mrs.Kumud Bhatia for petitioners in W.P.Nos.1908, 2638, 2639, 2640, 2644, 2647, 2649, 2652 and 2653 all of 1998.

Mr.S.D.Thokade for petitioners in W.P.No.2336/98.

Mr.N.P.Deshpande, AGP for State.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

Reserved on: December 21, 2006.
Pronounced on: January 19, 2007.

JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This group of petitions is being disposed off by a common judgment as all the petitioners are seeking a common relief for being absorbed as permanent / confirmed employees of the State Government in Class III posts with retrospective effect, on the basis of the judgment of the Maharashtra Administrative Tribunal in O.A. No.153 of 1991 dated 20th October 1992 and in O.A. No.895 of 1995 dated 30/11/1995, as well as the Government Resolutions issued on 21/10/1995, 22/10/1996 and 10/3/2005.

2. The Government of Maharashtra by its Resolution dated 30/10/1961 revised Rules for the recruitment of

Revenue Clerks and fixed the minimum qualifications of S.S.C. and maximum age limit of 23 years (open category) and 26 years (backward category). The selected candidates were to be assigned to an office to work in a clerical post and when not employed, he/she would be employed as a copyist and allowed to receive the fees. The enlisted candidates were to be sent for training with stipend and at the end of the training period if he/she would pass the test, he/she would remain as a candidate till a vacancy became available for appointing as a Clerk. A candidate who failed in the first training test would be kept on the waiting list as enlisted candidate till the result of the next such training test. Whereas the next test would be within a period of three months and if he/she again failed, the name would be removed from the list of the enlisted candidates. No person except from the approved list would be appointed to a purely temporary post. Accordingly those who were on the enlisted list but could not be absorbed against an available vacancy either on temporary or permanent post were called upon to work on payment of fees, under the Revenue Department, Settlement Commissioner Land Records, City Survey Office and the Forest Department etc.

3. The petitioners claim to be such candidates who were enlisted from 1968 onwards but could not be appointed against any available vacancies and, therefore, continued as "Unpaid Candidates" as per an appointment order issued for a Class III post. They were engaged in copying work from the public documents on the basis of sharing of fees. Out of the fees received for such public documents, 70 per cent of the amount could be paid to the petitioners while the remaining 30 per cent was to be credited in the Government Treasury. A regular muster roll was being maintained by the concerned departments in respect of these "Unpaid Candidates'. They were also required to follow the office timings, were not entitled for any salary including salary for paid/festival holidays etc. Sometimes they were given artificial breaks of few days. The earnings on fees sharing basis were to the tune of Rs.3000/- per month.

4. The State Government framed the Maharashtra Land Revenue (Inspection, Search and Supply of Copies of Land Records) Rules, 1970 and they were brought into force with effect from 6th July 1970. The rates of fees were fixed for certified copies of any record to be paid by the persons applying for the same and such

work of copying was to be entrusted to the candidates appointed as copyists and popularly known as "Unpaid Candidates". The remuneration for copying each document was again on the sharing basis of 70 per cent to be paid to the candidate and the balance 30 per cent to be credited to the Government treasury under the head of account "I-Land Revenue Miscellaneous". The copying work was entirely entrusted to such Unpaid Candidates and it was not required to be undertaken by a regular member of the office establishment. However, as and when such regular employees were assigned the work of copying documents, the entire amount of fees received was to be remitted to the State Treasury, as was made clear by a subsequent Resolution dated 15/6/1972 by the State Government.

5. O.A. No.153 of 1991 was filed in the representative capacity by the Secretary of Bhoomi Abhilekh Vina-vetan Karmachari Sanghatna (an unregistered organisation) praying for the Government policy of employing "Unpaid Candidates" as arbitrary, illegal and null and void, as well as to issue directions for their regular absorption against the vacant posts and to extend them all such benefits under the Service Rules applicable to a regular permanent

employee with effect from the initial date of appointment in the Revenue and Forest Department. While partly allowing the said application, the Maharashtra Administrative Tribunal by its judgment dated 20/10/1992 directed as under :

(a) Unpaid candidates who have put in more than ten years of service should be given preference by relaxing their age for their absorption in Land Records Department, if they fulfil the conditions of qualifications and registration with the Employment Exchange in accordance with the orders issued by the Government vide Government Resolution dated 17/10/1978 without referring them to the Regional Subordinate Selection Board.

(b) Unpaid candidates who had put in less than ten years service but were overage should be given three more chances to apply to the Regional Subordinate Selection Board.

(c) Unpaid candidates who were within the age limit should be permitted to apply to the

Regional Selection Board or MPSC whenever posts suitable to their qualifications were advertised. And

(d) Unpaid candidates should be selected for initial appointment from amongst the candidates sponsored by the District Employment Exchange instead of entertaining the direct applications and the condition that they would be free to apply to the Regional Selection Board or MPSC whenever posts suitable to their qualifications are advertised should be incorporated in the appointment order itself.

6. The State Government had belatedly challenged this decision of the Maharashtra Administrative Tribunal in an SLP which came to be dismissed by the Supreme Court on 14/7/1995. Per force, the State Government issued its Resolution dated 21/10/1995 for implementation of the directions set out by the MAT in O.A. No.153 of 1991. The Unpaid Candidates with more than ten years of service were directed to be absorbed against available vacant posts if they satisfied the prescribed requirements of educational qualifications

and their names were registered with the employment exchange, but without referring their cases to the Regional Selection Board and also by relaxing the maximum age limit. Those who had put in less than ten years of service but had crossed the higher age limit were allowed to apply to the Regional Selection Board three times, as and when proclamations for recruitment were issued. It is thus clear that those who were appointed as Unpaid candidates on or upto 20/10/1982 were required to be absorbed against available regular vacancies whereas those who joined after 20/10/1982 were allowed to take three chances by applying to the Regional Selection Board for regular employment under the State Government and by relaxing the higher age limit prescribed and provided that every one of them possessed the minimum qualification of SSC.

7. Some of the unpaid candidates from Revenue Department approached the Aurangabad Bench of MAT and filed O.A. No.895 of 1995. When O.A. No.895 of 1995 was decided on 30/11/1995 the G.R. dated 21/10/1995 was already holding the field but the applicants were working on licence basis for more than ten years. The Tribunal made it clear that by no stretch of imagination the applicants could claim to have a right

of preference over the applicants in O.A. No.153 of 1991 and in the matter of getting regular employment under the Government. Only on account of compassionate consideration the Tribunal directed the State Government to frame a scheme as envisaged in its earlier judgment dated 20/10/1992 for ad-hoc appointments. The State Government issued a G.R. dated 22/10/1996 for the absorption of the Unpaid candidates in the Revenue Department and fixed 30th November 1995 as the cut off date which implied that those Unpaid candidates who had completed ten years of service as on 30/11/1995 would be entitled for absorption by following the order dated 30/11/1995 in O.A. No.895 of 1995. It was also made clear that such absorbed candidates would not be eligible for leave salary and pensionary benefits for the period they had worked as Unpaid candidates.

8. Inspite of both these Resolutions issued by the State Government for absorption of the Unpaid candidates, the petitioners were either sought to be discontinued or were in fact discontinued as Unpaid candidates and when some of them had approached the Maharashtra Administrative Tribunal, it was contended by the State Government that the applicants being

Unpaid candidates, could not be termed as Government servants so as to invoke the Tribunal's jurisdiction under the Administrative Tribunals Act, 1985 thereby implying that the applications filed by them were not maintainable before the Tribunal. Consequently this set of petitions came to be filed and admittedly a total of 184 Unpaid candidates were either discontinued or sought to be discontinued. Barring a total of 33 Unpaid candidates all others were continued in the respective Departments on account of the stay orders granted by this Court or by the Tribunal. The Unpaid candidates who were directed to be continued are about 151 and on account of the orders passed by this Court on 18th December 2003, 150 posts were directed to be kept vacant for their absorption subject to the final outcome of these petitions. In Writ Petition No.2150 of 1998 a Division Bench of this Court passed an order on 16/10/2002 and by referring to the amended Maharashtra Land Revenue (Inspection, Search and Supply of Copies of Land Records) Rules, 2001 the Unpaid candidates were directed to be paid a minimum salary of Rs.3200/- in addition to sharing of the fees if it exceeded the said minimum salary. These directions more particularly read as under:

> "In our view the demand of the Unpaid candidates that they should be paid minimum salary of Rs.3200/- deserves to be accepted. Therefore, sharing ratio between the Government and Unpaid candidates shall be 30 percent and 70 percent respectively till Unpaid candidate receives a minimum salary of Rs.3200/-. However, over and above, the amount of Rs.3200/-, the sharing ratio of fees between the Government and Unpaid candidates shall be 75 per cent for the Government and 25 per cent for Unpaid Candidates. In other words Unpaid candidates shall be entitled to minimum salary of Rs.3200/- irrespective of whether they have been assigned any work or not, provided they attend the work place on all working days. However, in case copying charges payable to Unpaid candidates exceed Rs.3200/-, then ratio of sharing the fees shall be 75 per cent for the Government and 25 per cent for Unpaid candidates."

These revised rates were directed to be made effective from October 2001 and the arrears were to be paid in two equal instalments.

9. When the State Government through the concerned Departments filed affidavits-in-reply in all these petitions, the reliefs sought for were opposed solely on the ground that the petitioners did not fulfil the qualifying service period of ten years as set out in the G.Rs. dated 21/10/1995 and 22/10/1996. It appears that during the pendency of these petitions one more G.R. came to be issued by the State Government on 10/3/2005. This GR refers to the orders passed by this Court in Writ Petition Nos.2067, 1885 and 1882 of 2002 for absorption of 126 Unpaid candidates as per the scheme framed by the State Government vide its G.R. dated 22/10/1996. Some of the petitioners who had not put in ten years of qualifying service as on the cut off date i.e. 30/11/1995 claim that as on 10/3/2005 they had completed ten years of service and, therefore, they are entitled for being absorbed under the scheme framed by the Government vide G.R. dated 10/3/2005. It has been admitted that none of the petitioners who are before us are given the benefit of the latest G.R. dated 10/3/2005 and all of them or the others who are similarly placed and are included in the total figure of 150 candidates are not given the benefit of absorption as per the said G.R. Though no reasons are given by the State Government for denying the benefits

of absorption as per the latest G.R. dated 10/3/2005, by filing an additional affidavit, it has been now contended by the State Government that in view of the Constitution Bench decision in the case of Secretary, State of Karnataka and ors. Vs. Umadevi and ors. **[(2006) 4 SCC 1]**, the relief prayed for by the petitioners cannot be granted, though it is admitted that some of the petitioners were eligible for absorption pursuant to the G.R. dated 21/10/1995 as well as the second G.R. dated 22/10/1996.

10. In Writ Petition No.3127 of 1998 the Superintendent of Land Records, Mumbai Suburban District has filed an affidavit-in-reply and to the same the details of all these Unpaid candidates, most of whom are the petitioners before us, have been furnished. In the said affidavit the cut off date was treated to be 20/10/1992. However, we do not find any justification in fixing the cut off date as 20/10/1992 when in the G.R. dated 22/10/1996 the State Government itself has shifted the cut off date from 20/10/1992 to 30/11/1995 i.e. the date on which the second judgment of the Maharashtra Administrative Tribunal was rendered in O.A. No.895 of 1995. We, therefore, have no doubt in our mind that the abovementioned candidates were

illegally denied benefit for absorption as per the scheme formulated by the State Government vide its G.R. dated 22/10/1996 and they are eligible for being absorbed against the 150 posts directed to be kept vacant by this Court as per the order dated 18th December 2003 passed in Writ Petition No.2151 of 1998 and this has not been very seriously disputed by the learned AGP who addressed before us on behalf of the State Government.

11. Coming to the case of the remaining petitioners i.e. those who are not covered by the G.R. dated 22/10/1996, our attention has been invited by the learned AGP to the order passed by this Court in Writ Petition No.942 of 2004 on 4/2/2005, by relying upon the law laid down by the Apex Court in the case of A. Umarani vs. Registrar, Co-operative Societies & ors. **[(2004) 7 SCC 112]**. The petitioner in Writ Petition No.942 of 2004 had relied upon the G.R. dated 22/10/1996 and the cut off date as 30/11/1995 and prayed for directions for being regularised as the State Government employee. The order dated 4/2/2005 concluded in the following words:

"4. It would, therefore, be clear that in

such appointments there can be no case of regularisation. No writ, therefore, could have been issued by this Court in such matters. We reiterate the said proposition as carved out from the judgment in A. Umarani (Supra). For the aforesaid reasons Rule discharged. There shall be no order as to costs.

5. Considering the law as laid down by the Apex Court in A. Umarani vs. Registrar, Co-operative Societies & ors. **[(2004) 7 SCC 112]** the State Government may take steps to issue G.R. in the matter of regularisation strictly in terms of the judgment in A. Umarani (supra) and as explained by this Court in this Judgment."

If regards be had to the order of this Court in Writ Petition No.942 of 2004 following the law laid down in A. Umarani's case (Supra), the State Government would have done well in not issuing the G.R. dated 10/3/2005, though the said G.R. states that it was issued in obedience of the orders passed by this Court in Writ Petition Nos.1882, 1885 and 2067 of 2002. It is not known whether the orders passed by this Court in

these three petitions were placed on record when Writ Petition No.942 of 2004 was decided on 4/2/2005 and even otherwise the G.R. has been issued thereafter i.e. on 10/3/2005. Nothing stopped the State Government from filing a civil application in Writ Petition No.942 of 2004 to seek appropriate directions / modifications before issuing the G.R. dated 10/3/2005. The scheme framed for absorption vide the G.R. dated 10/3/2005 has, in fact, removed the cut off date and the scheme clearly envisages ten years or more service as on the date the G.R. was issued and now the State Government appears to have woken up by the Constitution Bench judgment in the case of Umadevi (Supra), in support of its contentions that the unpaid candidates or any others who were not appointed against regular posts and who have entered the Government departments by backdoor entries are not entitled for regularisation. There can be no dispute on this proposition that those who have entered the Government service by backdoor entries cannot claim regularisation of service by way of a vested right. However, this doctrine will not be applicable to those petitioners who were otherwise eligible for regularisation of service as per the GRs dated 21/10/1995 and 22/10/1996, in asmuchas all those petitioners were wrongly denied

the benefit of the scheme framed by the State Government vide the said Government Resolutions. For the other petitioners, unless it is demonstrated that their appointment was by following the due procedure for recruitment to Class III posts or their entry was not a backdoor entry, they cannot pray for a writ of mandamus for regularisation of their service.

12. We have no doubt in our mind that those petitioners who were covered by the G.Rs. dated 21/10/1995 and 22/10/1996, their entry as Unpaid Candidates in all the concerned departments could not be said to be backdoor entry. As set out in the opening paragraph of this judgment, the Unpaid Candidates came to be recruited as per the initial G.R. dated 30/10/1961 and they had undergone the due selection process as was prevailing at the relevant time.

13. In the judgment in O.A. No.153 of 1991 the Tribunal recorded the mode of appointment of the Unpaid candidates as under:

" Neither the applicant nor the Respondents have stated the manner in which

applicant and others have been appointed as Vina-Vetan Candidates but from the appointment order it appears that the applicant and others have been appointed on their applications. They have nowhere stated whether they were selected after they were sponsored by Employment Exchange nor the Respondents have stated that the applicants were appointed after inviting the applications by issuing an advertisement. Thus the applicant cannot claim the benefits of regular employees under Articles 14 and 16 of the Constitution of India."

14. After hearing the learned counsel for the petitioners and the learned AGP, we are satisfied that the abovesaid observations of the Tribunal do not imply that all the petitioners are the backdoor entrants or that their appointments were made without following the recruitment procedure prescribed under the relevant Rules or Resolutions. It is more than clear that none of the parties had invited the Tribunal's attention to the G.R. dated 30/10/1961 and the procedure for enlisting the candidates for being trained and appointed in the clerical posts in the Revenue Department was formulated. The said Resolution in its

preamble stated:

> "In view of the changed circumstances after the issuance of orders contained in Government Resolution No.5756/33 dated February 1957, particularly after the introduction of the training scheme for revenue Clerks, it is found necessary that the various provisions with regard to the procedure for enlistment period, training and appointment of the enlisted candidates, as laid down in the various Government orders should be compiled together in a consolidated order. In view of this and also the need for having uniformity throughout the State, Government is pleased to lay down the following revised rules. They come into force from the date of issue of this order in all the areas of the State. These rules should be deemed to have superseded rules, orders etc. issued on the subject by the former States of Madhya Pradesh and Hyderabad."

These Rules very clearly laid down the eligibility conditions and the procedure for enlisting the eligible candidates, lower as well as higher age limit,

educational qualifications (SSC), reservation for backward classes etc. Rules 9 to 12 of the said revised Rules read as under:

> "9. Each candidate shall be assigned to an office and shall work there except when sent for training in the clerks training centre or appointed in an acting vacancy in that or in any other office. When not employed in an acting vacancy, he should be employed as copyist and allowed to receive the fees.
>
> 10. Each candidate shall be required to attend office regularly and punctually and no candidate shall be allowed to absent himself without leave.
>
> 11. If an existing list of enlisted candidates in any district happens to contain a greater number of names than as prescribed by this Resolution the Collector, shall forthwith wood out unsuitable candidates.
>
> 12. The enlisted candidate, before he is sent for training with stipend, shall give an

undertaking as prescribed in Government Resolution Revenue Department No.TDX 1060-F dated 4th April 1968 (before they are under training). After passing the test he shall remain as a Candidate till a vacancy becomes available for appointing him as a Clerk.

15. The State Government thereafter framed the Maharashtra Land Revenue (Inspection, Search and Supply of Copies of Land Records) Rules, 1970 regulating, inter alia, the procedure for supplying the certified copies of records (including land records) and these Rules were brought into force with effect from 6th July 1970. The enlisted candidates who passed the test and who remained on such list on account of non-availability of vacancy for appointment as a clerk, were called upon to work as copyist in the Revenue and Forest Department and for supplying the certified copies of the records as contemplated under the MLR Rules of 1970. From the record we have also noted that the Government of Maharashtra had subsequently (sometimes in the year 1978) established Regional and Special Selection Boards for recruitment to Class III posts and these Boards were dissolved in June 1983. By its Resolution dated 9/2/1988 the Government of

Maharashtra established the Maharashtra Subordinate Service Selection Board as well as the Regional Subordinate Service Selection Boards. These Boards were entrusted with the responsibility of recruitment to the Class III posts. However, these newly created Boards also were dissolved by the State Government vide its Resolution dated 11/6/1999. It is, therefore, clear that from 9/2/1988 to 11/6/1999 appointments to Class III posts in all Government Departments as well as Self Government bodies were made through these Regional Subordinate Selection Boards as well as the apex Board at the State level which was named as Maharashtra Subordinate Service Selection Board. There is nothing on record to show that any of the petitioners who were appointed after 9th February 1988 were in fact selected by such Regional Subordinate Service Selection Boards or by the Maharashtra Subordinate Service Selection Board and, therefore, any of the petitioners who have started working as Unpaid candidates after 9th February 1988 are the backdoor entrants in asmuchas their appointment as such was not in keeping with the prescribed mode of recruitment and/or as per the Rules framed by the State Government for such recruitments.

16. Between June 1983 to 8/2/1988 though there was no Subordinate Service Selection Board, the State Government had laid down the procedure for recruitment to Class III posts as is evident from the G.R. dated 9/2/1988. The preamble of the G.R. dated 9/2/1988 and as reproduced hereinbelow clearly indicates that the recruitments from June 1983 till 8/2/1988 were being made as per the prescribed procedure:

> "After the dissolution of former Regional and Special Selection Boards in June 1983, an issue was under consideration of the Government as to which procedure should be adopted to make selection of the candidates to the Class III posts in Subordinate Services of the State Government. As a temporary measure, till the final decision is taken thereon, the said task is carried out by the Appointing Authority concerned as well as pursuant to the advise of the Selection Committees (in respect of the Government Servants) set up by the - Ministerial Departments and through the District and Divisional Selection Boards (in respect of Zilla Parishad employees)."

17. From the perusal of the G.R. dated 22/10/1996 it is clear that on 13/2/1987 the State Government issued a Circular banning the recruitment / appointment of Unpaid Clerks. The relevant portion of the said preamble from the G.R. dated 22/10/1996 reads as under

> "Before the Regional Selection Board came into being there was a prevalent procedure to prepare waiting list to make recruitment to the post of the clerk in each District. Till the candidates of such waiting list are absorbed in the actual service, they were being assigned the work as Unpaid Copying Clerk. After the Regional Board came into being, naturally the practice of preparing waiting list for filling up the post of Clerk and of assigning the work as "Unpaid Copying Clerk" till the candidates in the list are absorbed in the actual service was cancelled. Inspite of it, in the various offices of the Revenue Department licences have been granted to the Unpaid Copying Clerks. Vide Government Circular, Revenue & Forest Department, No. Est-1086/3618/483/E-7 dated 13th February 1987, all the Divisional Commissioners, as well as all the Collectors

were clearly given instructions not to appoint Unpaid Copying Clerk in future. Inspite of it, disregarding the said instructions, Unpaid Copying Clerks have been appointed in many offices."

18. From all this material on record we have no hesitation to hold that the Unpaid Candidates who were appointed till 12/2/1987 were not the backdoor entrants and certainly those who were appointed from 13/2/1987 onwards or after the establishment of the Regional Subordinate Selection Boards as per the G.R. dated 9/2/1988 are the backdoor entrants. In our view the petitioners who were appointed as Unpaid Candidates initially on or before 12/2/1987 will have to be given the benefit of the scheme for regularisation as implemented by the State Government vide its GRs dated 21/10/1995 and 22/10/1996. As noted by the Tribunal in its Judgment in O.A. No.153 of 1991 the State Government had issued the first G.R. on 17/10/1978 for regularisation of the Unpaid candidates. We may for ready reference reproduce the following observations set out in para 9 of the MAT's judgment in O.A. No.153 of 1991:

> "It has been admitted in the affidavit filed on behalf Respondents that Government had regularised services of some of the unpaid candidates by order dated 17/10/1978 issued by the Revenue and Forests Department to regularise services of the unpaid candidates working in Land Records (M.S.), Pune."

. These appointments were without reference to the Regional Subordinate Service Selection Boards already in existence and, therefore, the appointments made till 12/2/1987 as Unpaid Candidates in the Revenue and Forest Department of the State Government, are required to be regularised as per the G.R. dated 22/10/1996 or on the lines of the said policy, as they cannot be termed as backdoor entrants.

19. In respect of the petitioners who came to be appointed as Unpaid candidates from 13/2/1987 onwards it was contended by the learned counsel for the petitioners that denying the benefit of regularisation as per the G.Rs. dated 21/10/1995, 22/10/1996 and 10/3/2005 would certainly result in discrimination between the similarly placed petitioners. We do not agree with these submissions and more so when we have

already noted that after the reestablishemnt of the Subordinate Service Selection Boards vide G.R. dated 9/2/1988 it is not the case of any of the petitioners who joined after the said date i.e. 9/2/1988 that they were selected through the Regional Service Selection Board and were assigned the copying work as Unpaid candidates on account of suitable clerical vacancies being not available. The Government Circular dated 13/2/1987 had clearly banned the appointment of Unpaid candidates in the Revenue and Forest Department and all such appointments made thereafter were clearly the backdoor appointments and inspite of the fact that they have continued to work as such either on account of stay orders passed by this Court or the orders of continuation issued by the authorities concerned. The law laid down by the Constitution Bench in the case of Umadevi (Supra) does not permit us to issue a writ of mandamus or directions in the like nature for extending the benefit of the G.Rs. dated 21/10/1995, 22/10/1996 and 10/3/2005 in favour of those petitioners who entered the said posts from 13/2/1987 onwards. For ready reference we may reproduce the relevant observations in Umadevi's case (Supra):

"38. When a person enters a temporary

employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14

and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been

held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

20. We have also noted earlier that those of the petitioners who came to be appointed from 13/2/1987 onwards cannot rely upon the G.R. dated 10/3/2005 and for more than one reasons. Firstly though the said GR was purportedly issued in compliance with the orders passed by this Court In Writ Petition Nos.2067, 1882 and 1885 of 2002, the said G.R. was contrary to the the order passed by this Court on 4th February 2005 in Writ Petition No.942 of 2004 by following the judgment

of the apex Court in Umarani's case (Supra). Denying the benefit of the G.R. dated 10/3/2005 to such petitioners would not, in our view, violate the protection of equality as enshrined in Articles 14 and 16 of the Constitution and this issue finally stands settled by the Constitution Bench in Umadevi's case (Supra).

21. In the premises, we allow these petitions partly and hold that :

(a) All those Unpaid Candidates appointed till 12/2/1987 cannot be termed as backdoor entrants and they are eligible for the scheme formulated under the G.Rs. dated 21/10/1995 and 22/10/1996.

(b) The Unpaid Candidates who have been appointed from 13/2/1987 onwards are not entitled for the benefit of any of the G.Rs. viz. the G.Rs. dated 21/10/1995, 22/10/1996 and 10/3/2005.

(c) The 150 posts directed to be kept vacant in Class III by the order of this Court dated 18th December 2003 passed in Writ Petition No.2151 of 1998, shall be filled in by the concerned Departments from

amongst those Unpaid Candidates who fall in Category (a) above and are presently in the employment in any of these Departments.

(d) We also hold that the regularised Unpaid Candidates will be entitled for consequential benefits on par with similarly placed but already absorbed Unpaid Workers by the State Government consequent to the Resolutions dated 21/10/1995 and 22/10/1996.

22. Rule made absolute accordingly with no order as to costs.

23. After the pronouncement of this Judgment, Mr.Apte, the learned Senior Counsel and Mrs. Bhatia appearing for the petitioners stated that the unpaid workers who fall in Clause (b) of para 21 of this Judgment desire to approach the Apex Court as they have been denied the benefit of absorption / regularisation and, therefore, they pray for status quo as of now in case they are in employment. The learned AGP has opposed this application.

24. This oral application is allowed and it is

directed that those Unpaid Candidates who have been appointed from 13/2/1987 onwards and are presently continued in the respective Departments under the orders of this Court, they shall be continued further for a period of eight weeks.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)